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IN THE

Supreme Court of the United States

October Term 1968 No. 1419

H. K. PORTER COMPANY, INC., *Petitioner*,

v.

UNITED SAW, FILE AND STEEL PRODUCTS WORKERS OF AMERICA, FEDERAL LABOR UNION NO. 22254, AFL-CIO, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Brief for Respondent in Opposition

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OPINION AND ORDERS OF THE COURTS BELOW

The opinions and orders of the courts below are adequately set forth in the Petition.

JURISDICTION

The jurisdiction requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

1. In view of (1) the national policy favoring arbitration of disputes in labor matters, and (2) the absence of such questions of law requiring the decision of this Court, and (3) the absence of any conflict between the circuits with regard to the matter here involved, should the petition be granted?

2. Where both parties, at the outset and without restriction, mutually designate an arbitrator and submit to him the differences and disputes which have arisen between the parties as to the interpretation and application and/or the method of enforcement, including the formula for payment of the terms of paragraph 1 of the arbitration award of an arbitrator previously chosen by the parties as to whose award part 1 thereof had been judicially upheld, may thereafter one of the parties, the Company, at the hearing before the arbitrator attempt, equivocally as well as belatedly, to qualify the submission and thereby frustrate, abort and fragmentize the arbitration?

3. Where the labor agreement contains a broad arbitration provision, where the pension provision therein has been held by the lower court itself at a prior stage of the prolonged litigation to be vague and the arbitration clause quite broad, and where the circumstances in this case are of such a nature as to both justify and necessitate, after many years of litigation, a final resolution of the disputes or differences between the parties, did the Court of Appeals correctly hold that arbitrability was present and, further, that the arbitrator's award was within the scope of his authority?

STATEMENT OF THE CASE

The Petitioner seeks, in this action, to reverse a decision of the Court of Appeals whose judgment was entered on January 10, 1969. By its decision, the Court of Appeals reversed the judgment of the District Court with directions to enter judgment enforcing the award of Arbitrator Crawford.

This case has had a long history. In 1959, the Company announced its intention to move a large portion of its operations from its Philadelphia plant to Danville, Virginia. On behalf of the terminated employees, the Union, which was a party to a collective bargaining agreement with the Company, filed certain grievances claiming pension rights and severance pay. The agreement between the parties contained a broad grievance and arbitration clause providing for arbitration of differences between the parties as to the meaning or application of the contract. The Company objected to the arbitrability of these grievances but was finally ordered by the Honorable John W. Lord, Jr., on April 11, 1961, to submit the disputes to arbitration. *United Saw Workers v. H. K. Porter Co.*, 190 F. Supp. 407 (E.D. Pa. 1960).

Following the Order of Judge Lord in 1961, Professor W. Roy Buckwalter of Temple University was selected as the impartial arbitrator by the Union and the Company. He issued his award on August 17, 1962, as follows:

"Pensions: The Arbitrator rules that:

1. Each employee who, at the time he was terminated, had completed twenty-five years or more of service, but had not yet reached age sixty-five, shall be paid a full pension.

The formula for payment to be worked out by H. K. Porter Company and the Union.

Each terminated employee shall receive a $1,000 non-contributory life insurance policy as provided for in Section XIX-A.

2. Each employee, who at the time he was terminated had reached age sixty-five, but had not completed twenty-five years of service, shall be paid a pro rata pension based on an equitable formula to be worked out by H. K. Porter Company and the Union.

Each terminated employee shall receive a $1,000 non-contributory life insurance policy as provided for in Section XIX-A.

3. The request for pensions for employees who, at their termination, had not put in twenty-five years of service is denied.

Severance Pay:

The Union's request for severance pay is denied." (Appendix G, p. 73a)

The Company sought to have this award vacated, but Judge Lord granted enforcement of Parts 1 and 2 on May 10, 1963. *H. K. Porter Co., Inc. v. United Saw Workers*, 217 F. Supp. 161 (E.D.Pa. 1963). This decision was appealed to the Court of Appeals by the Company. The Court of Appeals affirmed the enforcement of Part 1 of the Buck-

walter Award, but reversed as to Part 2 of the Award. *H. K. Porter Co., Inc. v. United Saw Workers*, 333 F. 2d 596 (3rd Cir. 1964). The case was remanded to the District Court with instructions to enter appropriate judgment.

On December 7, 1964, pursuant to the remand, Judge Lord entered an order and judgment, drafted jointly by the Company and the Union and submitted to Judge Lord for his approval, which provided in part:

> "2. The arbitration award of Professor W. R. Buckwalter is hereby enforced as to paragraph 1 thereof as follows:
>
> Each employee who, at the time he was terminated, had completed twenty-five years or more of service, but had not yet reached age sixty-five, shall be paid a full pension.
>
> The formula for payment to be worked out by H. K. Porter Company and the Union.
>
> Each terminated employee shall receive a $1,000 non-contributory life insurance policy as provided for in Section XIX-A.
>
> 4. This Court shall retain jurisdiction of the parties to and subject matter of this action under Section 301 of the Labor Management Relations Act of 1947. In the event differences or disputes arise between the parties as to the interpretation and application and/or the method of enforcement, including the formula for payment, of the terms of paragraph 1 of the arbitration award . . . then either party shall apply to this Court . . . for such action as it deems appropriate." (Appendix F, p. 70a)

In compliance with the direction of the Buckwalter Award to work out a formula for payment as per Part 1 of the Buckwalter Award which was enforced by both Judge Lord and the Court of Appeals, the Company and the Union

met in a series of conferences at which they tried to agree as to when and how much was to be paid to the employees found by Arbitrator Buckwalter to be entitled to receive pensions.

When the Company and the Union were unable to settle the issue, they mutually agreed to resolve the formula for payment by arbitration. The parties agreed that instead of going back to Judge Lord they would have Donald A. Crawford as the impartial arbitrator and agreed to have him decide, as per paragraph 4 of Judge Lord's Order of December 7, 1964, the formula for payment by having him resolve the differences or disputes which arose between the parties as to the interpretation and application and/or the method of enforcement, including the formula for payment, of the terms of paragraph 1 of the Buckwalter arbitration award.

Hearings were held before Arbitrator Crawford on July 22 and 23, 1965. Both sides participated in these hearings. Briefs were submitted by both sides on November 6, 1965. Oral argument by both parties took place on December 16, 1965.

On January 21, 1966, the Arbitrator wrote the parties a letter stating as follows:

> "After considerable study of the record I do not interpret the award to require that a 25-year-service employee reach age 65 before he is paid a pension. I consider this issue to be a matter of interpretation within my jurisdiction. I will submit a formal opinion and award on this issue subsequently.
>
> The question of course is the threshold issue, and its determination may make it possible for the remaining issues to be resolved. To facilitate a faster resolution of the case and to avoid the possibility of further litigation, I am referring back all of the other issues raised at the hearing and in the briefs. There are (1) actuarial reduction of the pension amounts, (2) the 24-year-service group, (3) the rights of certain speci-

fied individuals, (4) interest, (5) calculation of social security, (6) funding, (7) joint administration, (8) life insurance, etc.

I am retaining jurisdiction in the event you do not want to negotiate or cannot settle the remaining issues. Should the remaining issues be referred back for an award proposals made in the court of negotiations will of course be unknown to me and therefore cannot prejudice either party." (Appendix G, pp. 75a, 76a)

Negotiations pursuant to this letter continued into May of 1966, but when the parties were unable to settle the remaining issues enumerated by Arbitrator Crawford in his letter of January 21, 1966, the parties referred the remaining unresolved issues, which are enumerated in Arbitrator Crawford's letter of January 21, 1966, back to Arbitrator Crawford for an award in accordance with his letter of January 21, 1966. On June 3, 1966, the parties had a further hearing before Arbitrator Crawford at which both parties presented witnesses as to actuarial data involved in the formula for payment and presented argument. There was no transcript taken of the hearing held on June 3, 1966: Arbitrator Crawford took his notes of the testimony.

On April 15, 1967, Arbitrator Crawford issued the following award:

"1. Grievants who at time of termination had completed 25 years of continuous service are not required to wait to age 65 for pension payments under the Buckwalter Award. The Company shall pay them full pensions effective as of the time of their termination.

2. In accordance with the Buckwalter Award, the pension allowance specified in Paragraph 1 and subsequent paragraphs of this Award shall be calculated under Section XX-D of the September 16, 1957 con-

tract, as extended September 15, 1958, without actuarial reduction. The Union request for the application of the minimum guaranteed pension for the grievants is denied.

3. The Company shall pay the grievants the total of the past due pension payments as a lump sum, calculated with the addition of four percent interest retroactively to the date of their termination.

4. Grievants who at time of termination had completed 25 years of continuous service but have since died before reaching age 65 were eligible under the Buckwalter Award for pension payments at time of termination. The Company shall pay their estates the sum of the full monthly pension payments from time of their termination to their death.

5. Grievants who at the time of termination had completed 24 years of continuous service are eligible under the Buckwalter Award to receive full pension payments upon the completion of their 25th year of continuous service. The Company shall pay them full pensions effective as of the completion of their 25th year of continuous service.

6. George Holmes and Henry Shuttleworth were terminated employees rather than quits and are therefore eligible under Paragraph 1 of the Buckwalter Award. The Company shall pay them full pensions effective as of time of termination.

7. The grievants who are eligible for pensions under the Buckwalter Award also qualify for a $1,000 non-contributory life insurance policy as of the month following their becoming eligible for pension payments and for the duration of their pensioned retirement. The Company shall pay the estates of deceased grievants the benefits due under the life insurance policy.

8. Howard Norcross and John Affatato were voluntary quits rather than terminated employees. They are therefore not eligible for pensions under Paragraph 1 of the Buckwalter Award.

9. The Union request for funding and joint administration of the pension plan is denied." (Appendix G, pp. 112a, 113a)

The Company, on May 26, 1967, moved in the Court below to vacate substantial portions, but not all, of the Crawford Award. The Union filed a cross-motion to enforce the Crawford Award in full.

Judge John W. Lord, Jr., in granting the motion of the Company, issued the following Order on April 4, 1968:

"It is ORDERED that the arbitration award of April 31, 1967 be and the same is hereby VACATED as to the following:

Paragraph 1 in its entirety.
Paragraph 2 insofar as it pertains to calculation of payment.
Paragraph 3 in its entirety.
Paragraph 4 in its entirety.
Paragraph 5 in its entirety.
Paragraph 6 insofar as it prescribes payment of pensions before the age of sixty-five.
Paragraph 7 insofar as it pertains to grievants deceased prior to their reaching age of sixty-five.

All other portions of the award be and the same are hereby ENFORCED." (Appendix H, p. 122a)

An appeal was taken by the herein Respondent to the Court of Appeals and the Court of Appeals issued its decision on January 10, 1969, reversing the judgment of the District Court with directions to enter judgment enforcing the Award of Arbitrator Crawford.

REASONS FOR DENYING PETITION

1. There is no conflict among the circuits with regard to the questions here involved and manifestly the questions here involved do not involve such questions of law requiring decision by this Court.

In essence, the Company is here asking this Court to depart from the following principles which have been judicially stated and restated in the trilogy of *United Steelworkers of America v. American Manufacturing Company*, 363 U.S. 564 (1960), *United Steelworkers of America v. Enterprise Wheel and Car Corporation*, 363 U.S. 593 (1960), *United Steelworkers of America v. Warrior & Gulf Navigation Company*, 363 U.S. 574 (1960), and the host of decisions which flowed therefrom (1) that arbitration is favored as a means by which grievances and disputes of labor matters are to be resolved; (2) that the courts are not to weigh and reweigh the merits which have been heard and decided by the arbitrator; (3) that arbitration should be the means of achieving a final resolution of labor grievances or disputes and that arbitration should not be made a prelude to prolonged litigation; (4) that grievances or disputes should not be fragmentized thereby burdening arbitration with endless delay and interminable litigation; that the peculiar expertise of the labor arbitrator should be recognized and supported; (5) that the arbitrator's award must be upheld if it can be based upon any rational interpretation of the collective bargaining agreement; (6) that where, in addition to and/or aside from the labor agreement itself, the parties agree to submit the grievance or dispute to arbitration they are bound by the decision of the arbitrator and the arbitration, under such conditions, cannot be frustrated or aborted or subverted by a belated and equivocal attempt to change the original submission at a hearing or in its, the Company's, brief filed after the hearing before the arbitrator designated by the parties. There is nothing set forth in the

Petition which would either justify or necessitate any departure by this Court from the principles hereinabove enumerated which principles have been followed by the Court of Appeals.

2. Unless it can be said with positive assurance that the arbitration clause or arbitration clauses are not susceptible of an interpretation that covers the asserted disputes then arbitrability exists and the disputes are within the scope of arbitration: doubts, if any, as to arbitrability should be resolved in favor of coverage; only the most forceful evidence of a purpose to exclude the disputes from arbitration must be forthcoming, particularly where the arbitration clause or arbitration clauses are quite broad; an arbitration award must be upheld if it can be based on any rational interpretation of the collective bargaining agreement.

The labor agreement here involved contains, in Section III, a broad arbitration clause which provides as follows:

> "Should differences arise between the Company and the Union or any of its members as to the meaning and application of the provisions of this Agreement, or should any grievance arise between the parties hereto, there shall be no stoppage of work, strike or lockout on account of such differences, but an earnest and sincere effort shall be made by the parties hereto to settle such differences [by arbitration] . . ." (Appendix A, p. 9a)

The labor agreement here involved provides in Section XX-B (Appendix J, p. 137a) as follows:

"B. UNION MANAGEMENT PENSION COMMITTEE.

> A pension committee of three members from Management and three members from active Union Membership shall review eligibility problems and

> shall be furnished employment and earnings data on those employees who are due for retirement. Problems of eligibility within the terms of this pension plan that cannot be solved by this Pension Committee shall be the only pension problems subject to arbitration, the Company and the Union to share in equal part the expense of the Impartial Arbitrator in any such cases."

Thus, (1) there is a broad arbitration clause which speaks in terms of "should *any* (emphasis supplied) grievance arise between the parties hereto," there is to be arbitration in such grievances if it cannot be mutually resolved by the parties, and (2) under Section XX-B of the labor agreement problems of eligibility are subject to arbitration; arbitration is not restricted only to who is eligible, but arbitration is available as to *all problems* of eligibility; problems such as "eligible as of what date," etc., must be resolved as being an integral as well as a necessary part thereof. In construing these very same two clauses at any earlier stage of this dispute, Judge Lord stated:

> "In the instant case, the arbitration clause is quite broad, and the quoted clause and another reference to non-arbitrable matters are both quite vague. The Warrior opinion is replete with language which requires arbitration in such case, of which the following passage is an example:
>
> "'. . . In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad . . .'" United Saw Workers v. H. K. Porter 190 F. Supp. at p. 411-412. (Appendix A p. 10a)

As the Court of Appeals stated in this case:

> "the two questions, when an employee was entitled to pension and when the right to payment of pension

benefits accrued, are at least so interwoven in the circumstances of this case that we cannot say that §XX-B alone requires their elimination from the scope of arbitration." (Appendix I, pp. 130a, 131a)

Further, the Court of Appeals stated:

"Section XX-B must be construed in the context of the unanticipated supervening act of the company in closing the plant which made it impossible for some of the employees to continue in service until attaining the age of sixty-five. As the agreement had been written in the normal course of events an employee who had served for twenty-five years but had not yet reached the age of sixty-five could continue in his employment until both conditions were fulfilled, and would thereupon be 'eligible for pension'. Such eligibility automatically carried with it the right to immediate pension payments and there was no distinction in time between eligibility for pension and payment of pension benefits." (Appendix I, p. 130a).

In addition to the labor agreement, there was an agreement by the parties to submit to Arbitrator Crawford the differences or disputes which arose between the parties as to the interpretation and application and/or the method of enforcement including the formula for payment of the terms of paragraph 1 of the arbitration award of Arbitrator Buckwalter. Thus, the labor agreement and/or the agreement by the parties as hereinbefore described formed more than sufficient basis for sustaining the Court of Appeals in its upholding of Arbitrator Crawford's Award. Obviously, Arbitrator Crawford's Award is within the scope of his authority and draws its essence from the labor agreement and/or from the agreement at the outset by the parties to submit without restriction to arbitration the differences and disputes which arose between them as to the interpretation and application and/or the method of enforcement, including the formula for payment, of the

terms of paragraph 1 of the arbitration award of Arbitrator Buckwalter.

3. The parties acknowledge that a formula for payment was to be worked out between them and, further, the parties agreed that the dispute which arose between them as to the formula for payment was to be submitted to a fresh arbitration.

The Company had voluntarily agreed with the Union to submit the dispute relating to the formula for payment to Arbitrator Crawford. The resort to arbitration was unrestricted at the outset. As the Court of Appeals stated in its opinion "The resort to an arbitration unrestricted at the outset must be presumed to include the dispute which the parties declared would require resolution by the District Court if they were unable to settle them between themselves. It would require an express limitation to exclude from the Crawford arbitration any of these disputes. None was expressed. Indeed, during the course of the arbitration the Company acknowledged that in determining the scope of the submission Crawford was entitled to take into consideration the provisions of paragraph 4 of the judgment" (Appendix I, p. 131a).

Paragraph 4 of the judgment provides as follows:

> "4. This Court shall retain jurisdiction of the parties to and subject matter of this action under Section 301 of the Labor-Management Relations Act of 1947. In the event differences or disputes arise between the parties as to the interpretation and amplification and/or the method of enforcement, including the formula for payment, of the terms of paragraph 1 of the arbitration award as quoted above, then either party shall apply to this Court under the above caption for such action as it deems appropriate." (Appendix F, p. 70a).

In footnote 5 of the opinion of the Court of Appeals in this case the following appears:

> "5. The Arbitrator: My jurisdiction then comes under this court order?
>
> Mr. Madeira [Attorney for the company]: Your jurisdiction comes under all the documents.
>
> The Arbitrator: Under all the documents, including this directive of the court, and at issue here is Paragraph 2; is that correct?
>
> Mr. Wilderman [Attorney for the union]: When you say 'under this order', you are referring to the order of December 7, 1964, Mr. Crawford?
>
> The Arbitrator: Yes, Judge Lord's.
>
> Mr. Madeira: My understanding is that that is correct, sir, that your jurisdiction comes from all the documents, and we are particularly concerned with paragraph 2 of the Union's Exhibit 1.
>
> Mr. Wilderman: Which is the order of December 7, 1964." (Appendix I, p. 132a).

As the Court of Appeals stated, "if the authority for Crawford's decision may not be found in the collective bargaining agreement, it was clearly authorized by the definition of the scope of their dispute in paragraph 4 of the judgment which the parties transmuted into an arbitration. Such an agreement is, of course, valid and enforceable. *Cf. Anaconda Co. v. Smeltermen's Union*, 402 F.2d 749 58 LC ¶13,033 (9 Cir. 1968)" (Appendix I, p. 132a).

The Company did not restrict the resort to arbitration before Arbitrator Crawford at the outset. Thus, the Company was bound to have all of the issues relating to the formula for payment heard and decided by Arbitrator Crawford. The Company's attempt at the hearing before Arbitrator Crawford to restrict Arbitrator Crawford to deciding only who was eligible to receive pensions, which issue had already been decided by Arbitrator Buckwalter, was both belated and equivocal. Appendix K shows with equal clarity that the Company did not object to having

Arbitrator Crawford hear and decide all of the issues involved in the formula for payment; the Company realized quite clearly at the hearings held by Arbitrator Crawford that he was going to proceed to hear and decide all of the issues. Further, note that the Company as well as the Union referred back to Arbitrator Crawford *all* of the issues enumerated in Arbitrator Crawford's letter of January 21, 1966, and that following this referral back to Arbitrator Crawford of *all* of the enumerated issues, Arbitrator Crawford held a further hearing on June 3, 1966, at which hearing the Company, as it did in the hearings held by Arbitrator Crawford on July 22 and 23, 1965, presented witnesses who testified as to *all* of the issues involved in the formula for payment to be decided by Arbitrator Crawford.

The Company's attempt to rely upon *Local 719 American Bakery and Confectionary Workers v. The National Biscuit Co.*, 378 F. 2d 918 (3 Cir. 1967) is both unavailing and misguided. The Court of Appeals held that "the case is clearly distinguishable from *Local 719 American Bakery and Confectionary Workers v. The National Biscuit Co.*, 378 F. 2d 918 (3 Cir. 1967), where we held that the union's objection to arbitrability, which it had made at the very outset and continued to preserve throughout the process of arbitration, was not lost because of its participation in the arbitration proceeding. Here, instead of an objection at the outset of the arbitration, there was agreement and acquiescence to the arbitration" (Appendix I, p. 132a).

Further, in *Local 719 American Bakery and Confectionary Workers v. The National Biscuit Co.*, supra, the Court of Appeals condemned an attempt to resist arbitrability with what is at best a weak semantic parry entirely insufficient to overcome the presumption in favor of arbitrability mandated by Supreme Court decision in *United States Workers of America v. Warrior and Gulf Navigation Co.*, 363 U. S 574 (1960). In our case the Company's attempt at the hearing to resist arbitrability of any issue other than who was eligible for pensions was at best a weak, semantic parry entirely insufficient to overcome the

presumption in favor of arbitrability; in addition the Company's attempt was both belated and equivocal. Further, in *Local 719 American Bakery and Confectionary Workers v. The National Bisouit Co.*, supra, the Court of Appeals required that the objection made by a party at a hearing to an arbitrator's jurisdiction be stated with equal clarity. Appendix K shows that the belated and equivocal objection by the Company at the hearing before Arbitrator Crawford was not made with equal clarity. Finally, in *Local 719 American Bakery and Confectionary Workers v. The National Biscuit Co.*, supra, the Court of Appeals decided that with regard to the arbitrator's award which was supported by past practices, the Court of Appeals made no inquiry into the quality or persuasiveness of the practices found to exist; in our case Arbitrator Crawford has found there to be past practices in support of the Union's position, and the Company admits that there were past practices to support the Union's position. Therefore, the Company's attack upon the quality or persuasiveness of the past practices is unavailing because, as the Court of Appeals held in *Local 719 American Bakery and Confectionary Workers v. The National Biscuit Co.*, supra, there can be no inquiry into the quality or persuasiveness of the past practices which have been here found to exist by Arbitrator Crawford.

4. **Rule 52a of the Federal Rules of Civil Procedure Does not shield or fortify the findings of fact and conclusions of law of Judge W. Lord, Jr., of the United States District Court for the Eastern District of Pennsylvania, the lower court, because the lower court never had a trial or hearing, never saw or heard the witnesses, never had before it all of the testimony at the hearings which were all conducted by and before the Arbitrator. The lower court, in effect, arbitrarily assumed the role of the arbitrator, decided the disputes or differences between the parties on the merits and substituted its judgment for that of the arbitrator.**

It is well established that the courts must not review or reweigh an arbitrator's award on the merits and to substitute its judgment for that of the arbitrator. *General Drivers, etc., Local Union No. 89 v. Riss and Company*, 372 U. S. 517 (1963). The lower court arbitrarily assumed the role of arbitrator in this case and, in reality, reviewed Arbitrator Crawford's Award on the merits and substituted its judgment for that of Arbitrator Crawford. To compound that error the lower court issued findings of fact and conclusions of law without having any trial or hearing before the lower court. All of the hearings were conducted before Arbitrator Crawford. Even though the transcript of the hearings held before Arbitrator Crawford on July 22 and 23, 1965, were put into the record by the Company over the objection of the Union, which contended that the court did not have the right to review Arbitrator Crawford's Award on the merits, the transcript introduced by the Company was not the complete record because it contained none of the testimony introduced before Arbitrator Crawford on June 3, 1966, at which hearing the testimony was not recorded. Thus, if we assume that Judge Lord, who arbitrarily substituted himself in place of Arbitrator Crawford over the stated objection of the Union, proceeded to use the transcript of the hearings before Arbitrator Crawford as the basis for his findings of fact, he did not have all of the testimony before him. Further, Judge Lord neither saw nor heard the witnesses who testified before Arbitrator Crawford and was thus in no position to judge as to the credibility of the witnesses. Accordingly, to put it mildly, the Company's attempt to rely on Rule 52a of the Federal Rules of Civil Procedure, 28 USC Rule 52a, is both incorrect and misguided. Since it was Arbitrator Crawford who conducted the hearings, heard and saw the witnesses and judged the credibility of the witnesses then, by analogy, it is Arbitrator Crawford's findings of fact and conclusions of law which should be strongly supported by Rule 52a of the Federal Rules of Civil Procedure. Furthermore, even

if, which is denied, Arbitrator Crawford was mistaken in law and erroneously evaluated the evidence, his evaluations may not be discarded by the lower court because there exists a strong presumption favoring the validity of an arbitration award, for an arbitrator's award must be the end and not the commencement of litigation. *Newark Stereotypers Local No. 18 v. Newark Morning Ledger*, 261 F. Supp. 832 (D.N.J. 1966), *affd.* 397 F. 2d 594 (3rd Cir. 1968) (cert. denied 1969). In this case, Arbitrator Crawford was not mistaken in law and did not erroneously evaluate the evidence.

CONCLUSION

The Petitioner has advanced no adequate reason for the granting of its Petition for Writ of Certiorari. There is no conflict among the circuits with regard to the questions here involved and manifestly the questions here involved do not involve such questions of law requiring decision by this Court. The foregoing should suffice as a basis for denying the Petition for a Writ of Certiorari; however, the Respondent has stated questions two and three and has set forth its answers and supporting arguments in order to make it clear beyond any doubt that there is no basis for the granting of the Petitioner's Writ of Certiorari and that the decision of the Court of Appeals is correct, is supportive of arbitration and is consistent with this Court's stated and restated position favoring arbitration as a means by which to resolve disputes in labor matters.

Respectfully submitted,

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